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SEMANTAN ESTATE (1952) SDN BHD v. KERAJAAN MALAYSIA & ORS

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
HAS ZANAH MEHAT JCA
B AHMAD NASFY YASIN JCA
[CIVIL APPEAL NO: W-01(A)-414-08-2019]
21 JUNE 2021

C ***CIVIL PROCEDURE:*** *Intervener – Application for – Application to be added as respondent in mandamus application to compel performance of public duty – Transfer of 50% company shares to intervener and appointment as agent in settlement negotiation – Whether intervener 'proper person' under O. 53 r. 8(1) of Rules of Court 2012 – Whether intervener has direct interest - Whether bound by court's decision in action – Whether lacked right to interfere with right of company*
D *to enforce judgment*

This was the appellant's appeal against the decision of the High Court made on 8 July 2019 allowing the eighth respondent's notice of application under O. 53 r. 8 of the Rules of Court 2012 ('ROC') ('intervener application'). The appellant commenced an action for trespass against the first respondent who,
E having acquired 263,272 acres of land belonging to the appellant, purportedly under the Land Acquisition Enactment (Cap 140) (since repealed in 1960), divided it into 38 titles and registered the land in the name of the Federal Lands Commissioner. On 29 December 2009, the High Court decided in favour of the appellant, holding that the land was taken unlawfully
F and that the purported acquisition was null and void. The High Court ordered that: (i) the appellant retained its beneficial interest in the land of which the first respondent had, through its servants and/or agents, taken unlawful possession of and that the appellant was entitled as against the first respondent to possession thereof; (ii) the first respondent pay the appellant
G mesne profits as damages for trespass, to be assessed by the Senior Assistant Registrar; and (iii) the first respondent pay to the appellant costs forthwith. The judgment was affirmed by the Court of Appeal and the first respondent's application for leave to appeal to the Federal Court was dismissed. The Federal Court also dismissed the first respondent's application for a review
H of its decision. The appellant, subsequently, by way of judicial review, sought leave to issue an application for orders of *mandamus* ('*mandamus* application'). The High Court granted the leave of *mandamus*. The intervener application was premised on the claim that the eighth respondent was a proper person to intervene in the appellant's application for judicial review and be added as the eighth respondent. The eighth respondent claimed that
I the majority shareholders/contributories of the appellant had agreed to

transfer 50% of its shares to the eighth respondent and appointed and authorised the eighth respondent, on behalf of the shareholders/contributories, to negotiate a settlement between the appellant and the Federal Government. A

Held (allowing appeal with costs; setting aside intervener High Court order) B

Per Kamaludin Md Said JCA delivering the judgment of the court:

(1) A 'proper person' under O. 53 r. 8(1) of the ROC refers to a party with direct interest. A direct interest is established where a non-party will be bound by the court's decision, and accordingly, intervention must be permitted to protect their interests. The eighth respondent would not be bound by the court's decision in the appellant's *mandamus* application to seek orders to give effect to a judgment of the High Court dated 29 December 2009. A company is a legal entity separate and distinct from its members and it is the company which acts upon a judgment in its favour. The appellant was a separate legal entity. The judgment was made solely in favour of the appellant. Therefore, any 'settlement' negotiations initiated by or on behalf of a shareholder of the appellant did not bind the appellant. The only party which could enter into any settlement or settlement negotiations in respect of the judgment was the appellant, which acted through its liquidators as it was in a members voluntary winding up. (paras 28, 29, 43, 44 & 46) C D E

(2) The directors of the company in liquidation do not have the power to act on behalf of the company save as consented to or sanctioned by the liquidator of the company. When a company is in liquidation, under para. 1 of the Eleventh Schedule of the Companies Act 2016 read with para. 1 of the Twelfth Schedule, compromises as provided therein can only be decided by not less than 75% of the shareholders/contributories of the company. The eighth respondent was not a shareholder/contributory of the appellant. Further, no shareholder/contributory of a company has the *locus* or right to interfere with the right of the company to enforce judgments in its favour. Therefore, a person, such as the eighth respondent, who had no legal relationship with the appellant, had no *locus* or right to interfere with the right of the company to enforce judgments in its favour. (paras 47, 49, 50 & 52) F G

(3) The eighth respondent had nothing to do with the decision under challenge in the judicial review proceedings as the eighth respondent was not involved in the decision nor could they claim that they ought to have been involved in giving effect to the judgment. The *mandamus* application sought to compel the performance of the public duty prescribed by law *ie*, the first respondent to transfer the land back to the H I

appellant. Hence, the eighth respondent failed to show or establish any direct interest to be allowed to be heard in the *mandamus* application under O. 53 r. 8(1) of the ROC or to provide any basis which would support an application made under O. 53 r. 8(1) of the ROC as a proper person. The eighth respondent should not be allowed to be joined as a party in the judicial review proceedings. (paras 58 & 59)

Case(s) referred to:

Abdul Rahim Aki v. Krubong Industrial Park (Melaka) Sdn Bhd & Ors [1995] 4 CLJ 551 CA ***(refd)***

Advance Synergy Capital Sdn Bhd v. The Minister Of Finance, Malaysia & Anor [2011] 7 CLJ 557 CA ***(refd)***

American International Assurance Bhd v. Coordinated Services L Design Sdn Bhd [2012] 1 CLJ 506 CA ***(refd)***

Jerry WA Dusing & Anor v. Majlis Agama Islam Wilayah Persekutuan & Ors [2017] 1 CLJ 133 CA ***(refd)***

Leong Yuet Heng v. Chan Thai & Ors [1972] 1 LNS 73 FC ***(refd)***

Levy v. State of Victoria & Ors (1997) 146 ALR 248 ***(refd)***

Majlis Agama lslam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***

Mega Forest Plantation Management Sdn Bhd v. Pengarah Perhutanan Negeri Selangor & Ors [2021] 7 CLJ 561 CA ***(refd)***

Perak Integrated Networks Services Sdn Bhd v. Urban Domain Sdn Bhd & Anor [2018] 5 CLJ 513 FC ***(refd)***

Pioneer Haven Sdn Bhd v. Ho Hup Construction Company Bhd & Anor And Other Appeals [2012] 5 CLJ 169 CA ***(refd)***

Tengku Dato' Ibrahim Petra Tengku lndra Petra v. Petra Perdana Bhd & Another Appeal [2018] 2 CLJ 641 FC ***(refd)***

Titular Roman Catholic Archbishop Of Kuala Lumpur v. Menteri Dalam Negeri & Anor (No 2) [2010] 2 CLJ 258 HC ***(refd)***

Vasudevan Vazhappulli Raman v. T Damodaran P V Raman & Anor [1981] CLJ 84; [1981] CLJ (Rep) 101 FC ***(refd)***

Legislation referred to:

Companies Act 2016, ss. 445(2), 456, Eleventh Schedule para 1, Twelfth Schedule para 1

Control of Rent Act 1966, s. 23

Rules of Court 2012, O. 53 r. 8(1)

For the appellant - Ira Biswas, Janet Chai Pei Ying & Christine Lay Kei Een; M/s Chooi & Company + Cheang & Ariff

For the 1st respondent - Edward Ng Boon Siong & Jason Ng Kau; M/s Jason Ng & Partners

For the 2nd respondent - Narkunarathy Sundareson; AG Chambers

[Editor's note: For the High Court judgment, please see Semantan Estate (1952) Sdn Bhd v. Kerajaan Malaysia & Ors [2019] 1 LNS 1557 (overruled).]

Reported by S Barathi

JUDGMENT

Kamaludin Md Said JCA:

Introduction

[1] This is the appellant's appeal against the whole decision of the High Court made on 8 July 2019 ("intervener High Court order") allowing the eighth respondent's notice of application dated 28 May 2019 under O. 53 r. 8 of the Rules of Court 2012 ("intervener application").

Judicial Review

[2] The appellant's application for judicial review No. WA-25-44-02-2017 seeks orders to give effect to a judgment of the High Court dated 29 December 2009 in favour of the appellant against the first respondent in High Court Civil Suit No. S-21-213-2003 ("*mandamus* application").

[3] On 13 May 2019, leave of *mandamus* was granted by the High Court to the appellant to compel the first to seventh respondents to:

(i) transfer and cause to be transferred the 263.272 acres of land under CT17038 Mukim Batu ("the land") to the applicant free of encumbrances and liabilities, including but not limited to registering the applicant as the proprietor of the land;

(ii) take and cause all the necessary steps to be taken to register the applicant as the proprietor of the land, free of encumbrances and liabilities;

(iii) execute and cause to be executed all intsruments of transfer necessary to effect a transfer of the land free of encumbrances and liabilities to the applicant;

(iv) issue and cause to be issued documents of title to the land free of encumbrances and liabilities in the name of the applicant;

(v) prepare, change, cancel, delete, convert and/or deliver the relevant register document(s) of title, issuing documents of title or any other register of instruments relating to the land, including any memorial or entering in the relevant register of titles and documents so as to vest the registered proprietorship in the land free of encumbrances in the name of the applicant; and

(vi) return and cause to be returned and make all necessary directions, arrangements, preparations and/or take all necessary actions in respect of returning any lands over possession of the land to the applicant as the lawful proprietor and owner of the land.

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The Intervener Application

[4] The intervener application is for *inter alia* leave to intervene in the appellant's *mandamus* application under O. 53 r. 8 of the Rules of Court 2012. The application is premised on the claim that the eighth respondent is a proper person to intervene in the appellant's application for judicial review and be added as the eighth respondent. The eighth respondent claims that the majority shareholders/contributories of the appellant have agreed to transfer 50% of its share to the eighth respondent and appointed and authorised the eighth respondent on behalf of the shareholders/contributories to negotiate a settlement between the appellant and the Federal Government.

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[5] The appellant denied the allegations and objected to the intervener application. The objection is premised on the ground that the eighth respondent has no legal relationship with the appellant and has no right to interfere with the appellant's actions to give effect to the judgment in the appellant's favour.

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[6] The High Court granted leave to the eighth respondent to intervene in the appellant's application for judicial review under O. 53 r. 8 of the Rules of Court 2012 as a proper person and be added as the eighth respondent ("intervener High Court order").

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The Appeal

[7] The appeal concerns the decision of the intervener High Court order which came before us. Having heard the appellant's appeal and considered the oral submissions and the written submissions by the appellant's and the eighth respondent's counsels, the SFC representing the first to seventh respondents abstain from making any submissions, we find there is merit in the appellant's appeal. We are satisfied that the eighth respondent has no direct interest in the appellant's action and therefore is not a proper person under O. 53 r. 8 of the Rules of Court 2012 to intervene.

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[8] It is our unanimous decision that the appellant's appeal is allowed with costs of RM10,000 subject to allocatur against the eighth respondent. The intervener High Court order is set aside.

[9] We give our reasons.

Material Facts

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[10] The first respondent had taken 263.272 acres of the land belonging to the appellant held under CT17038 Mukim of Batu purportedly under the Land Acquisition Enactment (Cap 140) (since repealed in 1960). After the first respondent took possession of the land, it was divided into 38 titles and registered in the name of the Federal Lands Commissioner.

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[11] The appellant filed an action (High Court Civil Suit No. S7-21-213-2003) against the first respondent in trespass and succeeded as the High Court held that the first respondent had unlawfully taken the land and that the purported acquisition was null and void ("High Court judgment").

[12] The judgment was pronounced on 29 December 2009 in favour of the appellant and ordered as follows:

(i) that the appellant retained its beneficial interest in the land of which the first respondent had through its servants and/or agents taken unlawful possession of and that the appellant was entitled as against the first respondent to possession thereof;

(ii) that the first respondent pay the appellant mesne profits as damages for trespass, to be assessed by the Senior Assistant Registrar; and

(iii) that the first respondent pay to the appellant costs forthwith.

[13] The judgment was affirmed by the Court of Appeal on 18 May 2012 ("Court of Appeal order"). The first respondent's application for leave to appeal to the Federal Court against the Court of Appeal order was dismissed on 21 November 2012 ("Federal Court dismissal of leave order").

[14] Further, on 22 November 2018, the Federal Court dismissed the first respondent's application for a review of the said decision of the Federal Court dated 21 November 2012 ("Federal Court dismissal of review order").

[15] On 17 February 2017, the appellant, through its then solicitors Messrs Chooi & Company, issued a demand for the first to seventh respondents to give effect to Order No. 1 of the judgment ("demand").

[16] The first to seventh respondents failed, refused and/or neglected to comply with the demand or to do all such things as may be necessary to give effect to Order No. 1 of the judgment resulting in the appellant taking out of the *mandamus* application ie, the appellant's judicial review application for leave to issue an application for orders of *mandamus* on 27 February 2017.

[17] On 13 May 2019, the High Court granted the appellant leave to issue an application for orders of *mandamus* in the *mandamus* application. Subsequently, the appellant filed a notice of hearing of application of judicial review for *mandamus* on 23 May 2019. On 30 May 2019, the eighth respondent served the intervener application to intervene in the *mandamus* application to the appellant.

Decision Of The High Court

[18] The learned High Court Judge ("HCJ") in arriving at his decision, having deliberated the relevant cases and O. 53 r. 8(1) of the Rules of Court 2012 held that the eighth respondent is the proper person to be included as a party to the proceedings on the grounds that:

(i) the majority shareholders/contributories of the appellant desired to grant the rights, benefits and interests of total 54.5% of their shares to the eighth respondent;

(ii) the majority shareholders/contributories of the appellant inclined in favour of the eighth respondent in resolving the dispute concerning the disputed land in an amicable manner which has prolonged for more than 60 years between the appellant and the respondents; and

(iii) pursuant to the delegation to the eighth respondent, the outcome of the JR application which affects the majority shareholders/contributories of the appellant and as a consequence thereof, affecting the eighth respondent representing the interest of majority shareholders/ contributories of the appellant show that the eighth respondent has direct interest in the *mandamus* orders sought in the JR application.

Grounds Of Appeal

[19] The appellant has raised 11 grounds of appeal in its memorandum of appeal (see CCB2 at pp. 37 to 42).

Appellate Interference

[20] The law for appellate intervention has been well established where an appellate court is generally slow to interfere a lower court's decision, except under circumstance *inter alia*, where the lower court's discretion had been exercised based on wrong principles and should have been exercised in a contrary way or that there has been a miscarriage of justice (see *Vasudevan Vazhappulli Raman v. T Damodaran P V Raman & Anor* [1981] CLJ 84; [1981] CLJ (Rep) 101; [1981] 2 MLJ 150 at p. 151 (FC).

[21] In our judgment, the same principle should apply that the duties of an appellate court in such matter as this are, confined to those normally exercisable where the lower court has a discretion.

[22] In the present case, we are justified in interfering with the decision of the learned HCJ and set aside the order of the High Court on the ground that the learned HCJ has taken into account matters that are in law irrelevant when deciding that the eighth respondent is a proper person having direct interest in the *mandamus* orders sought in the judicial review application. We are satisfied that the learned HCJ failed to act judiciously and fairly in arriving at his decision and therefore had erred in fact or in law.

The Position In Law

[23] As correctly held by the learned HCJ and submitted by both parties in this appeal that there is a specific framework for the determination of applications for judicial review, whereby O. 53 r. 8(1) of the Rules of Court 2012 specifically drafted to cater for persons claiming an interest in a judicial review proceeding who wish to be heard in opposition. It reads:

(1) Upon the hearing of an application for judicial review, any person who desire to be heard in opposition to the application and appears to the Judge to be a proper person to be heard may be heard not withstanding that he has not been served with the cause papers in the matter.

[24] In this respect, there are plethora of cases on the test to determine whether a party is a proper person and it will be suffice to cull and refer to a few to restate the well-established principle. In the landmark case of *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307 at pp. 319 to 320, the Federal Court was of the view that the phrase "proper person" stipulated in O. 53 r. 8(1) of the Rules of Court 2012 must be read as referring to persons with direct interest. It is significant that the party not having any direct interest will not be allowed to be joined as a party, particularly in judicial review proceedings.

[25] The legal principle enunciated in the case of *Majlis Agama Islam Selangor* (*supra*) was adopted in the Court of Appeal case of *Advance Synergy Capital Sdn Bhd v. The Minister Of Finance, Malaysia & Anor* [2011] 7 CLJ 557 at pp. 569 to 570; [2011] 6 MLJ 376 at pp. 385 to 386, where the judgment given by Justice Low Hop Bing (as he then was) at paras. [26] to [28] is reproduced herein:

[26] In addition, O. 53 r. 8(1) confers upon the judge a **wide discretion to hear a proper party or person in opposition to an application for judicial review**' so long as the conditions contained therein have been fulfilled, *viz*:

(a) the person desires to be heard in opposition to the application; and

(b) that person appears to the judge to be a proper person to be heard, notwithstanding that he has not been served with the cause papers in the matter.

[27] In the instant appeal, **so long as the judge has demonstrated a proper exercise of discretion under O. 53 r. 8(1)**, on the basis of the facts and circumstances prevailing in each particular case, and established judicial principles, **this court would be slow in embarking on an appellate interference.**

[28] … In the context herein, **justice and fairness dictate the necessary inclusion** of the second respondent as a party to **canvass their opposition on a subject matter directly affecting their interest** …

(emphasis added)

[26] Having outlined the principle relating to intervention in a judicial review proceeding, it is well noted that the courts take a liberal approach in granting leave to a non-party with direct interest to intervene in a judicial review proceeding, and exclude indirect interest.

[27] In this respect, the test to determine whether the eighth respondent is a proper person to be heard, is whether the eighth respondent has direct interest.

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Decision Of This Court

[28] Apart from the case of *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307, which held that a "proper person" under O. 53 r. 8(1) of the Rules of Court 2012 refers to a party with direct interest, the case of *Titular Roman Catholic Archbishop Of Kuala Lumpur v. Menteri Dalam Negeri & Anor (No 2)* [2010] 2 CLJ 258; [2010] 2 MLJ 122 at para. 5 pp. 126 to 127 similarly held that in order to qualify under O. 53 r. 8(1) of the Rules of Court 2012, an applicant must show a direct interest. In dismissing the applicant's application to intervene under O. 53, it was held that the applicants had nothing to do with the decision under challenge in the judicial review proceedings as the applicants were not involved in the decision nor can they claim that they ought to have been involved.

[29] To determine whether the eighth respondent has a direct interest so as to be entitled as a proper person to be heard, we have to look into the meaning of "direct interest". In this regard, the Court of Appeal in the case of *Jerry WA Dusing & Anor v. Majlis Agama Islam Wilayah Persekutuan & Ors* [2017] 1 CLJ 133; [2017] 1 ShLR 1 a p. 16 has made reference to the Australia High Court case of *Levy v. State of Victoria & Ors* (1997) 146 ALR 248, where Brennan CJ explained the difference between direct and indirect interests and the corresponding scope of the right to intervene. A direct interest is established where a non-party will be bound by the court's decision, and accordingly, intervention must be permitted to protect their interests.

[30] The eighth respondent's case is that the majority shareholders of the appellant have given efforts to attain a global settlement with the first respondent. On or around September 2017, the majority shareholders of the appellant have requested the liquidators to convene a meeting for the purpose of approving the proposed global settlement to be submitted to the first respondent. As such, mandate has been granted to the liquidators for negotiation of the settlement agreement.

[31] The eighth respondent alleged that the liquidators were at all material times, well aware of the intention of the majority shareholders of the appellant to enter into a global settlement with the first respondent. However, the mandate period granted to the liquidators by the shareholders for negotiations of the proposed global settlement lapsed on 31 December 2017 without any settlement proposal for deliberation of shareholder and/or contributories nor any proposal submitted to the first respondent for approval.

[32] The eighth respondent alleged that there was no effort made by the liquidators to achieve a settlement between the parties since the day when mandate was granted to the liquidators. In their view, the liquidators have failed and/or neglected in fulfilling their duties and obligations posed on them.

[33] Thereafter, the majority shareholders of the appellant has agreed in principle to sell 54.5% of their shares to the eighth respondent. Despite that the eighth respondent had not retained ownership to the shares, the eighth respondent has nevertheless acquires the rights, benefits and interests in the shares.

[34] The eighth respondent submitted that the direct interest of the eighth respondent accrues not solely as mere beneficial ownership to the shares, but for the fact that the eighth respondent representing the majority interest of the appellant is in the middle of resolving the long legal battle between the appellant and the respondents by negotiating and facilitating a prospective settlement pertaining to the disputed land in question as directed and mandated by the majority shareholders/contributories of the appellant.

[35] It follows therefore that the outcome of the judicial review application will certainly leave an impact on the eighth respondent. Thus, whether the judicial review application were to succeed, the eighth respondent's interest will be affected and this warrants an intervention by the eighth respondent to protect his legal right and interest.

[36] Further and/or alternatively, the eighth respondent is negotiating on the settlement agreement with the respondents and other related parties to resolve the enduring issues of the disputed land, the ongoing judicial review application would directly and potentially jeopardise the process and outcome of the negotiation of the settlement agreement.

[37] The eighth respondent further submitted that, it was well within the knowledge of the liquidators that the majority shareholders of the appellant had convened meetings and agreed with the proposal of the eighth respondent. Resulting from the meetings, the eighth respondent has successfully procured financial assistance of EUR1,000,000,000 as of 3 July 2019 for the purpose of a global settlement between the parties in this proceeding. In the circumstances, the financial interest goes to the root of the interest of the proceeding before this Honourable Court.

[38] In furtherance of that, there was no meetings convened by the liquidators with the shareholders neither to oppose the involvement of the eighth respondent to negotiate the settlement agreement with the first respondent nor to oppose the eighth respondent's application to intervene. It is unjust for the appellant to now challenge the legal standing of the eighth respondent to intervene in the judicial review proceeding.

[39] In the first place this case is about the appellant's *mandamus* application. The order of *mandamus* is a command issued by the High Court asking an authority to perform a public duty imposed upon it by law. For example, when an authority omits to decide a matter which it is bound to decide under the law, *mandamus* can be issued directing it to decide the same.

Mandamus can be granted only when a legal duty is imposed on an authority and the applicant has a legal right to compel the performance of the public duty prescribed by law, and to keep the subordinate bodies and officers, exercising public functions within the limits of their jurisdiction.

[40] In *Leong Yuet Heng v. Chan Thai & Ors* [1972] 1 LNS 73; [1973] 1 MLJ 62, Madame Chan Tai applied to Kuala Lumpur Rent Tribunal for certificate under s. 23 of the Control of Rent Act 1966 certifying that certain premises had ceased to be controlled premises. The Rent Tribunal dismissed her application. She appealed to Kuala Lumpur Rent Appeal Board. The Board held that it did not have the jurisdiction to entertain the appeal and accordingly dismissed it. She appealed to Kuala Lumpur High Court for an order of *certiorari* to quash the Rent Tribunal Board's order and for an order of *mandamus* directing the Board to hear and determine her appeal. The High Court holding that a decision of the Tribunal under s. 23 could be appealed to the Board, ordered that the Board's order be quashed and commanded the Board to hear and determine the appeal. The appellant appealed to the Federal Court. In dismissing the appeal, the Federal Court held that there is a right of appeal from a decision of the Rent Tribunal under s. 23 to the Rent Appeal Board and therefore, the learned judge was right in issuing the orders of *certiorari* and *mandamus*.

[41] In the present case, the appellant's *mandamus* application is against the first to seventh respondents and not against the eighth respondent. The appellant denied the allegations of the eighth respondent. The appellant submitted that the eighth respondent is not a proper person to be heard in the *mandamus* application as it has no direct interest so as to be permitted to be heard in the *mandamus* application under O. 53 r. 8(1) of the Rules of Court 2012.

[42] As alluded to earlier, the judgment of the High Court has pronounced and ordered that the appellant retained its beneficial interest in the land of which the first respondent had through its servants and/or agents taken unlawful possession of and that the appellant was entitled as against the first respondent to possession thereof. Rightly, the applicant has a legal right to compel the performance of the first respondent's public duty under the law to hand possession over the land and/or register the applicant as the proprietor of the said land. The appellant is involved in a voluntary winding up and also rightly acting through its liquidators which has and can enforce the rights to the land upon which the *mandamus* application is premised. In the premise, the majority shareholders did not have legal right or legal interest to the assets of the company.

[43] We do not agree with the eighth respondent's submission that the direct interest of the eighth respondent accrues on the fact that the eighth respondent representing the majority interest of the appellant is in the middle

of resolving the long legal battle between the appellant and the respondents. It has been said earlier that a direct interest is established where a non-party will be bound by the court's decision, and accordingly, intervention must be permitted to protect their interests. In the present case, we are of the view that the eighth respondent will not be bound by the court's decision in the appellant's *mandamus* application to seek orders to give effect to a judgment of the High Court dated 29 December 2009.

[44] As correctly pointed out that the appellant is a separate legal entity. It is trite law that a company is a legal entity separate and distinct from its members and it is the company which acts upon a judgment in its favour (see *Perak Integrated Networks Services Sdn Bhd v. Urban Domain Sdn Bhd & Anor* [2018] 5 CLJ 513; [2018] 4 MLJ 1 at para. 42 at p. 528 (CLJ); p. 15 (MLJ); *Abdul Rahim Aki v. Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 4 CLJ 551; [1995] 3 MLJ 417 at para. 8-C, p. 429; and *Mega Forest Plantation Management Sdn Bhd v. Pengarah Perhutanan Negeri Selangor & Ors* [2021] 7 CLJ 561; [2020] MLJU 2413 (Court of Appeal) at para. 84).

[45] In the *Mega Forest* case (*supra*), the Court of Appeal held that a shareholder of a company whose purported assets were the subject of a judicial review application had no *locus standi* to commence judicial review proceedings. The Court of Appeal cited and adopted the finding in the case of *Pioneer Haven Sdn Bhd v. Ho Hup Construction Company Bhd & Anor And Other Appeals* [2012] 5 CLJ 169 where it was held that it is a cornerstone of company law that a company is a separate legal entity and as such a shareholder cannot claim any right to any asset of the company. Thus, as a matter of law; the appellant in *Mega Forest*, being majority shareholder did not have legal right or legal interest to the assets of the company.

[46] It is undisputed that the judgment was made in favour of the appellant solely. Therefore, any "settlement" negotiations initiated by or on behalf of a shareholder of the appellant do not bind the appellant. The only party which can enter into any settlement or settlement negotiations in respect of the judgment is the appellant, which acts through its liquidators as it is in a members voluntary winding up.

[47] We agree with the appellant that even the directors of the company in liquidation do not have the power to act on behalf of the company save as consented to or sanctioned by the liquidator of the company. This is set out in s. 445(2) of the Companies Act 2016 which provides:

> On the appointment of a liquidator, all the powers of the directors cease, except so far as the company in general meeting with consent of the liquidator, or the liquidator sanctions the continuance of all the powers of the directors.

[48] The appellant refers to the following cases in support:

(i) Before a liquidation – in the case of *Tengku Dato' Ibrahim Petra Tengku Indra Petra v. Petra Perdana Bhd & Another Appeal* [2018] 2 CLJ 641; [2018] 2 MLJ 177 (Federal Court) at paras. 108 and 118 pp. 190 and 193, it was held that the powers of management of a company are vested in the directors and not the shareholders.

(ii) After a liquidation – in the case of *American International Assurance Bhd v. Coordinated Services L Design Sdn Bhd* [2012] 1 CLJ 506 (Court of Appeal) at para. 25, it was held that once a company is wound up, the board of directors of the company becomes *functus officio*. The liquidator displaces the directors and the control of the activities of the company is vested with the liquidator. No one but the liquidator can act for the company. The directors will not be able to act on behalf of the company once the company is wound up.

(iii) After a liquidation – in the case of *Mega Forest* (*supra*) at paras. 82 to 85, the Court of Appeal held that the principle that shareholders have no legal interest in the assets of the company, is trite, and as the company had been wound up, it is for the liquidator to take any action as he thinks fit (para. 87).

[49] Based on the authorities above, we agree that no shareholder/contributory of a company has the *locus* or right to interfere with the right of the company to enforce judgments in its favour. Therefore, it is clear that a person such as the eighth respondent who has no legal relationship with the appellant has no *locus* or right to interfere with the right of the company to enforce judgments in its favour.

[50] In fact, when a company is in liquidation, under para. 1 of the Eleventh Schedule of the Companies Act 2016 read with para. 1 of the Twelfth Schedule, compromises as provided therein can only be decided by not less than 75% of the shareholders/contributories of the company (see s. 456 of the Companies Act 2016 which provides for the powers of liquidator in a voluntary winding up; Eleventh Schedule of the Companies Act 2016 and Twelfth Schedule of the Companies Act 2016).

[51] In our considered view, even if the eighth respondent is a shareholder of the appellant it does not have any *locus* or right to negotiate any settlement and/or enter into settlement arrangement on behalf of the appellant; or interfere with the right of the appellant company to enforce judgments in its favour for that matter.

[52] The eighth respondent is not even a shareholder/contributory of the appellant (paras. 6(d) and 10 of the appellant's affidavit affirmed on 21 June 2019 and 24 June 2019 at CCB 1, pp. 248 and 249 and para. 15 of the appellant's affidavit affirmed on 3 July 2019 at CCB 1, p. 202).

[53] In fact, the liquidators of the appellant were informed that there was no completion of the alleged sale by the alleged vendors of the shares to the eighth respondent. Certainly, there was no registration of the eighth respondent as a shareholder of the appellant (para. 6(d) of the appellant's affidavit affirmed on 21 June 2019 and 24 June 2019 at CCB 1, p. 248 and para. 15 of the appellant's affidavit affirmed on 3 July 2019, p. 202). A B

[54] The appellant contended that at no time has the appellant authorised the eighth respondent to negotiate any settlement of the judgment on its behalf, and the eighth respondent has not adduced any evidence to prove its allegation (para. 7 of the appellant's affidavit affirmed on 21 June 2019 and 24 June 2019 at CCB 1, p. 248 and para. 7(c) of the appellant's affidavit affirmed on 3 July 2019 at CCB 1, p. 201). C

[55] The appellant submitted that the learned judge's finding that the eighth respondent had a direct interest was based on the letter dated 15 May 2018 from Ng Lu Siang (one of the appellant's shareholders) to the Prime Minister's Office set out in para. 16 of his judgment. However, contrary to the learned judge's findings in para. 16, the said letter dated 15 May 2018 (which was disputed by the appellant) does not give the eighth respondent any mandate or authority to negotiate a settlement of the judgment on behalf of the appellant as the appellant has not authorised, appointed or mandated the eighth respondent to negotiate, facilitate or enter into any settlement of the judgment on behalf of the appellant. D E

[56] As for the contents of the letter dated 15 May 2018 being disputed, contrary to the finding of the learned judge, the contents of the letter dated 15 May 2018 were in fact disputed by the appellant (paras. 7 and 10 of the liquidators' affidavit affirmed on 21 June 2019 and 24 June 2019, and para. 7(b) and 7(c) of the liquidators' affidavit affirmed on 3 July 2019), where the appellant expressly did not admit the contents of para. 6 of the eighth respondent's affidavit affirmed on 28 May 2019 and denied all averments therein and stated that no authority was given by the appellant to the eighth respondent, and secondly by the fact that there was no completion of the alleged sale of any shares in the appellant to the eighth respondent. F G

[57] We discovered that all the three impugned letters which dated on the same date ie, on 15 May 2018 were written to Tun Dr Mahathir bin Mohamad (as he was the PM then) immediately after Dr Mahathir became Prime Minister. We notice that this episode only started or initiated during this point of time. The letters are *inter alia* purportedly informing the PM that the majority shareholders have agreed and signed the share transfer agreement of 54.5% (majority) with the eighth respondent and appointed the eighth respondent to represent them and be responsible to continue negotiation with the Federal Government for settlement. As correctly contended by the appellant, there is no prove of any approval or mandate from the appellant for the negotiation or settlement. H I

[58] On the facts, the eighth respondent had nothing to do with the decision under challenge in the judicial review proceedings as the eighth respondent was not involved in the decision nor can they claim that they ought to have been involved in giving effect to the judgment. The *mandamus* application is only seeking orders to give effect to a judgment of the High Court dated 29 December 2009 in favour of the appellant against the first respondent and essentially to transfer the land belonging to the appellant to give effect to the judgment. In other words, to compel the performance of the public duty prescribed by law ie, the first respondent to transfer the land back to the appellant.

[59] Given the matters above, it is our considered view that the eighth respondent has failed to show or establish any direct interest to be allowed to be heard in the *mandamus* application under O. 53 r. 8(1) of the Rules of Court 2012 or to provide any basis which would support an application made under O. 53 r. 8(1) of the Rules of Court 2012 as a proper person. The eighth respondent should not be allowed to be joined as a party, in judicial review proceedings.

Conclusion

[60] In conclusion, it is our unanimous decision that the appeal should be allowed for the reasons summarised as follows:

(i) Under O. 53 r. 8(1) of the Rules of Court 2012, the only persons who can intervene in a judicial review application to be heard in opposition to the judicial review application are those who qualify as "proper persons".

(ii) A proper person is one who has a direct interest in the proceedings.

(iii) The eighth respondent has no direct interest in the proceedings and is not a proper person under O. 53 r. 8(1) of the Rules of Court 2012.

(iv) The eighth respondent, who is not a shareholder/contributory of the appellant but which claims it has purchased shares in the appellant company from shareholders/contributories of the appellant is a stranger to the judgment and the *mandamus* application and is not a proper person to be heard in opposition to the *mandamus* application pursuant to O. 53 r. 8(1) of the Rules of Court 2012.

(v) The eighth respondent has no direct interest in the *mandamus* application as:

(a) The eighth respondent has no legal relationship with the appellant.

(b) The eighth respondent has no right or authority to enforce the judgment.

(c) The eighth respondent has no right to interfere with the appellant's actions to give effect to the judgment in the appellant's favour.

(d) The eighth respondent has no right or authority to negotiate a settlement of the judgment on behalf of the appellant and seek to intervene in the *mandamus* application on that basis.

(e) Even if the eighth respondent was a shareholder/contributory of the appellant (which it is not), it does not have the right or authority to enforce the judgment or negotiate a settlement of the same on behalf of the appellant as no shareholder/contributory of a company has the right to do so.

(f) The eighth respondent, who is in any event not a shareholder/contributory of the appellant, was not appointed by the appellant to negotiate a settlement of the judgment which is the subject matter of the *mandamus* application.

[61] We allowed the appeal with costs of RM10,000 to the appellant against the eighth respondent subject to allocatur. The intervener High Court order 8 July 2019 is set aside.